

Re: AOR 1975-116

NOTE: The responsive document to AOR 1975-116 is an Opinion of Counsel, not an opinion issued by the Commission, and does not constitute an Advisory Opinion. It is included in this database for archival purposes and may not be relied upon by any person.

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AOR 1975-116 issued as
OC 1975-120

OC 1975-120

Horace K. Calvert, Treasurer
Oklahoma Republican State Committee
3390 Liberty Tower
Oklahoma City, Oklahoma 73102

Dear Mr. Calvert:

This responds to your letter of November 21, 1975, which was initially processed as an advisory opinion request and relates to the reporting procedures made applicable to State and county committees by the Federal Election Campaign Act of 1971, as amended.

The Supreme Court recently held in Buckley v. Valeo, 44 U.S.L.W. 4127 (S.C. January 30, 1976), that the Commission as constituted could not be given statutory authority to issue advisory opinions. Although this part of the Court's judgment was stayed for 30 days, the Commission has determined that it will not issue further advisory opinions under 2 U.S.C. §437f during the stay period. Thus, this letter should be regarded as an opinion of counsel, rather than an advisory opinion.

It is my understanding that the Oklahoma Republican State Committee (the State Committee) has established county committees in most of the 77 counties in Oklahoma. These county committees solicit contributions in the name of the Oklahoma Republican Party but not for any specific candidate. All contributions are transferred to the State Committee, which may refund a portion of the monies to the county committees according to a pre-determined formula. The State Committee in its sole discretion will expend funds transferred from the county committees (1) to defray operating expenses or (2) to make direct contributions to State or Federal candidates.

With regard to these procedures, you inquire whether a county committee which receives contributions in excess of \$1,000 in the name of the Oklahoma Republican Party that are not earmarked for any particular candidate or fund maintained by the Party, and which transfers all contributions to the State Committee, must register with the Commission as a Federal committee.

Under 2 U.S.C. §433(a), a political committee which anticipates receiving contributions or making expenditures during a calendar year in an aggregate amount exceeding \$1,000 must file a statement of organization with the Commission and must report under 2 U.S.C. §434. The terms "contribution" and "expenditure" include any "transfer of funds" from one political committee to another political committee [2 U.S.C. §431(e)(3) and (f)(3)].

Where a subordinate of a State party committee is not a separate committee for purposes of fundraising, but acts merely as an agent of the State Committee for administrative purposes, it is my opinion that (1) the subordinate is not a "political committee" as defined in §431(d), (2) is not required to register under §433, and (3) the transfer of funds is not a contribution or expenditure within the meaning of §431(e) and (f). My opinion in this regard is based upon the validity of an assumption that the county committees function only as receiving agents for the State Committee, merely collecting and delivering to the State Committee contributions made on behalf of the Oklahoma Republican Party, and without discretion to retain some or all of the funds. A further assumption underlying my opinion is that all monies returned to the county committees consistent with the pre-1960 election laws are contributed to or expended on behalf of Federal candidates in amounts aggregating more than \$1,000 in a calendar year, see 2 U.S.C. §433.1/

It is my opinion that in order to assure compliance with the Act a county committee may not accept any contribution in the form of a check which is not payable in the name of the

1/ It should be noted as well that any independent expenditures made by such a committee in an amount in excess of \$100 but not exceeding \$1,000 may be subject to a reporting requirement under 2 U.S.C. §434(e). See Buckley, supra, Sl.Op. at pp. 73-76.

State Committee or of the Oklahoma State Republican Party. Furthermore, the State Committee must assume total responsibility for full reporting and disclosure under Title 2, United States Code, and for conformity to the applicable Title 18 limitations and prohibitions. Specifically, the State Committee must, in my opinion, take appropriate steps to insure that no contributions prohibited by Federal law, including 18 U.S.C. §§610, 611, 613, 614, or 615, are commingled with funds that are subsequently used to make transfers to a Federal candidate. I would also point out that the State Committee must not accept contributions in excess of the applicable limits in 18 U.S.C. §608(b).

This letter is to be regarded as an opinion of counsel which the Commission has noted without objection.

Sincerely yours,

Signed: John G. Murphy, Jr.
John G. Murphy, Jr.
General Counsel

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